

For the purpose of determining the local governmental unit whose tax is applicable, a retail sale, by a producer of coal or other mineral mined in Illinois, is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. 86 Ill Adm. Code 270.115(g)(1). (This is a GIL).

November 12, 1999

Dear Mr. Xxxxxx:

This letter is in response to your letter dated September 21, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, COMPANY, who will be a taxpayer to the State of Illinois of sales tax incident to the sale of limestone at retail by COMPANY, we respectfully request a ruling on the allocation of the sales tax in the following fact situation.

We note that a draft of this letter has been circulated to counsel for both the VILLAGE and the CITY and for their suggestions of additional facts to be incorporated into this letter. Counsel for the CITY has indicated he will write a separate letter on the subject to you.

1. **COMPANY's present operation.** COMPANY is presently engaged in the underground mining of high grade limestone at its approximate 90-acre site located in the VILLAGE at the northeast corner of the intersection. Mining operations take place approximately 300 to 400 feet below the depleted quarry surface. Extracted stone is brought to the surface for processing and all sales tax accruing is presently allocated to the VILLAGE. The VILLAGE and COMPANY executed an Annexation Agreement dated May 26, 1992, which is attached hereto for your reference. By that agreement, it is provided that the sales tax resulting from COMPANY's operations should be allocated to the VILLAGE.
2. **COMPANY's future operations.** On August 25, 1998, the CITY and COMPANY entered into a lease agreement authorized by vote of the CITY council concerning certain property owned by the CITY at the southeast corner of the intersection. This property is located in the CITY. Part of the property was formerly used as a quarry and landfill, and part was used as a sanitary landfill. A copy

of the Agreement for Lease between the CITY and COMPANY is attached for your reference.

3. By that lease, COMPANY is authorized to mine limestone underneath the CITY property. COMPANY has also received a permit from the Illinois State Toll Highway Authority to tunnel beneath ROUTE and connect the existing mining operations in VILLAGE with the proposed mining operations underneath the CITY property. Work on the access tunnels beneath ROUTE is substantially completed. It is anticipated that mining of the limestone underneath the CITY property will commence within the next 90 to 120 days.
4. There will be no access to the mine for the transportation of the mined limestone underneath the CITY property to the surface of the CITY property. The sole access to the CITY mining site will be a vertical ventilation stack required by government authority. All limestone mined beneath the CITY property will be transported through the access tunnels underneath ROUTE through the VILLAGE mine site, and will reach the surface for processing and sale at the VILLAGE site.
5. Paragraph 9 of the Agreement for Lease with the CITY provides:
 9. With respect to minerals obtained from beneath the CITY Property which are sold subject to the Retailers Occupational Tax, COMPANY agrees to pay the Retailers Occupational Tax in accordance with law. COMPANY and the CITY agree that the mouth of the mine with respect to minerals extracted from the CITY property pursuant to this Lease shall mean the southerly right of way line for STREET.

STREET acts as the northerly boundary line of the CITY property.

6. CITY seeks a ruling on the municipality entitled to the allocation of sales taxes on retail sales of stone mined beneath CITY property which reaches the surface and is processed on VILLAGE territory.

It is on the basis of these facts that the above ruling is requested. COMPANY commits to comply with any ruling made by the Department of Revenue.

Limestone is considered tangible personal property. Sales of limestone are subject to Retailers' Occupation Tax and in addition, local taxes may apply. When determining what locality's local taxes are to be collected when limestone is sold, the Department's regulation, 86 Ill. Adm. Code 270.115, Jurisdictional Questions, is helpful. Subsection (g) of this regulation specifically applies to sales of coal or other minerals. Subsection (g)(2) defines "mineral" to include

"not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth." 86 Ill Adm. Code 270.115(g)(1) states as follows:

"For the purpose of determining the local governmental unit whose tax is applicable, a retail sale, by a producer of coal or other mineral mined in Illinois, **is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth.**"
(Emphasis added.)

The Department interprets this to mean that the sale at retail occurs at the location of the entrance of the mine. The entrance of the mine is the place where the limestone comes out of, or is extracted from, the earth. The regulation defines retail sale as a sale to a user, such as a railroad, public utility or other industrial company for use. Please note that a taxable sale is the final sale to the user. Therefore, a sale by a mineral producer to a wholesaler or retailer for resale is not a retail sale and no tax is due.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.